

H

B

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92

COMMITTEE REPORT

HOUSE

(7)

FURTHER: FINANCE

1/9/84

Date: 2-27-84

Mr. Speaker:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had HB 492

"An Act relating to state aid for school construction; and providing for an effective date."

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 492 (HHS) same title
- new title
- and recommends THAT IT DO PASS
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

Rich Blalock

Lam Postinger

CHAIRMAN

Alaska State Legislature

REP. MAE TISCHER
CHAIRMAN



POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3777

House of Representatives
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

MEMORANDUM

April 18, 1984

TO: Representative Mae Tischer
FROM: Bill Lovell, Staff, House HESS Committee *Bill*
RE: Sectional Analysis of CSHB 492 (HESS)

I have prepared the following sectional analysis of the House HESS Committee Substitute for House Bill 492, "An Act relating to state aid for school construction; and providing for an effective date."

Sections 1, 3, and 4 simply amend existing sections of law that refer to the existing aid program so that they now refer to the new program.

Section 2 establishes the new program of state grants for school construction (AS 14.11.200). Under the new program, the Department of Education is authorized to grant municipal school districts 90 percent of the cost of school construction projects approved by the department (AS 14.11.200(a)). The school construction grant account is established consisting of funds appropriated to the account and interest earned on those funds; any portion of a grant that is not used to carry out the purposes of this section is also credited back into the account (AS 14.11.200(b)). The bill sets out a list of priorities to be used by the department in determining which projects are eligible for the grants (AS 14.11.200(c)). To be eligible for a grant a municipality must agree to pay at least 10 percent of the construction costs with cash or bonds issued through the municipal bond bank authority. The project must also be approved by the voters of the municipality (AS 14.11.200(d)).

"Cost" is defined as the cost of acquiring, constructing, enlarging, repairing, remodeling, equipping, or furnishing of public, elementary and secondary school buildings, including the costs of all necessary studies, surveys, plans and specifications, architectural, engineering or other special services, acquisition of real property, site preparation and development, purchase, construction,

reconstruction and improvement of real property and the acquisition of machinery and equipment as may be necessary in connection with the project; an allocable portion of the administrative and operating expenses of the grantee; and the cost of financing the project, including premiums on insurance and legal fees (AS 14.11.200(e)).

Allocations under this program for school construction projects begun after July 1, 1984, are reduced by the amount of money used for the construction of residential space, hockey rinks, planetariums, saunas, and other facilities for single-purpose sporting or recreational uses that are not suitable for other activities. Allocations under this section may not be reduced by the amount of money used for construction of a small swimming pool, tank, or water storage facility used for water sports. However, allocations under this section of the law are to be reduced by the difference between the amount of money used to construct a swimming pool that is competition size or larger and the amount of money that would have been used to construct a small swimming pool, tank, or water storage facility, as determined by the Commissioner of Education (AS 14.11.200 (f)).

The Commissioner of Education is required to provide an annual report to the Legislature to include information about the balance remaining in the school construction account at the end of each fiscal year, and the use of the funds in the account for the fiscal year (AS 14.11.210). The Commissioner is required to prescribe by regulation the necessary requirements, forms, and procedures to be used in applying for construction grants under this program (AS 14.11.220(a)). Applications from municipalities seeking a construction grant are due by October 15 of the previous fiscal year (AS 14.11.220(b)). The Commissioner of Education must review all applications for construction grants and make a recommendation to the governor as to the amount of funds to be appropriated to the construction grant account (AS 14.11.220(c)).

The way the program is set up, the department would not distribute available funds to all potentially eligible school construction projects so that some projects would receive less than 90 percent funding. Rather, eligibility will be determined in part by the amount of funds available each year. Consequently, eligible projects will receive 90

Sectional Analysis of CSHB 492 (HESS)
April 18, 1984
Page 3

percent funding and other projects will receive nothing.

Sections 5 and 6 repeal the existing school construction debt retirement program except that the program remains in effect with respect to a project if construction on the project began before July 1, 1984, or if the the bonds for the project are authorized after June 30, 1983, and before July 1, 1984.

Section 7 provides that the Act takes effect July 1, 1984.

WTL:kjb

Section

58. Alaska School Activities Association
59. Alaska school activities fund

Section

60. Regulations
70. Withholding state funds

Collateral references. — 68 Am. Jur. 2d Schools, §§ 5-7, 37-55.
78 C.J.S. Schools and School Districts, §§ 83-91.

Modern status of doctrine of sovereign immunity as applied to public schools and institutions of higher learning. 33 ALR3d 703.

Sec. 14.07.010. Department of Education. The Department of Education includes the commissioner of education, the state Board of Education, and the staff necessary to carry out the functions of the department. (§ 1 ch 98 SLA 1966)

NOTES TO DECISIONS

Quoted in *Begich v. Jefferson*, Sup. Ct. Op. No. 481 (File No. 894), 441 P.2d 27 (1968).

Anchorage School Dist., Sup. Ct. Op. No. 2160 (File Nos. 4796, 4797, 4826), 617 P.2d 490 (1980).

Cited in *Tunley v. Municipality of*

Sec. 14.07.020. Duties of the department. The department shall

- (1) exercise general supervision over the public schools of the state except the University of Alaska;
- (2) study the conditions and needs of the public schools of the state and adopt or recommend plans for the improvement of the public schools;
- (3) provide advisory and consultative services to all public school governing bodies and personnel;
- (4) prescribe by regulation a minimum course of study for the public schools;
- (5) establish, in coordination with the Department of Health and Social Services, a program for the continuing education of children who are held in detention facilities in the state during the period of detention;
- (6) accredit those public schools which meet accreditation standards prescribed by regulation by the department; these regulations shall be adopted by the department and presented to the legislature during the first 10 days of any regular session, and become effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house;
- (7) prescribe by regulation, after consultation with the Department of Health and Social Services, standards that will assure healthful and safe conditions in the public and private schools of the state; the standards for private schools may not be more stringent than those for public schools;

(8) in cooperation with the Department of Health and Social Services, exercise general supervision over public and private pre-elementary schools and over the educational component of nurseries as defined in AS 47.35.080(4); pre-elementary schools in this paragraph means schools for children ages three through five years when the schools' primary function is educational;

(9) provide accredited elementary and secondary correspondence study programs available to any Alaskan through a centralized office of correspondence study;

(10) accredit private elementary and secondary schools which request accreditation and which meet accreditation standards prescribed by regulation by the department;

(11) review plans for construction of new public elementary and secondary schools and for additions to and major rehabilitation of existing public elementary and secondary schools and, in accordance with regulations adopted by the department, determine and approve the extent of eligibility for state aid of a school construction project begun after July 1, 1978; for the purposes of this paragraph, "plans" include educational specifications, schematic designs, and final contract documents;

(12) provide educational opportunities in the areas of vocational education and training, basic education, and fire-service training to individuals over 16 years of age who are no longer attending school;

(13) administer the grants awarded under AS 14.11.020. (§ 1 ch 93 SLA 1966; am § 2 ch 69 SLA 1971; am § 6 ch 104 SLA 1971; am § 1 ch 190 SLA 1975; am § 6 ch 50 SLA 1977; am §§ 1-3 ch 126 SLA 1978; am § 10 ch 147 SLA 1978; am § 1 ch 36 SLA 1979; am § 24 ch 59 SLA 1982; §§ 1, 2 ch 92 SLA 1982)

Revisor's notes. — A reference to AS 14.11.020 was substituted for a reference to AS 14.07.190 in paragraph (13) by the revisor of statutes under AS 01.05.031 to conform to the renumbering of that section.

Effect of amendments. — The first 1978 amendment deleted "private, and denominational" preceding "schools" near the beginning of paragraph (6), inserted "and private" preceding "schools" in paragraph (7), added the language beginning "the standards for private schools" to the end of paragraph (7), and added paragraph (10)

The second 1978 amendment added paragraph (11).

The 1979 amendment added paragraph (12).

The first 1982 amendment substituted "of" for "and" preceding "new public elementary" in paragraph (11).

The second 1982 amendment substituted "'plans' include" for "a 'plan' includes" in paragraph (11), inserted "and approve" and "the" preceding "purposes of this paragraph" in that same paragraph, and added paragraph (13).

Stated in Tunk
Anchorage School 1

Collateral refer
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buildings. 1 ALR 1
Power of school
physicians, nurses.
12 ALR 922.
Extent of legislat
to attendance and
477; 53 ALR 832.
Kindergartens o

Sec. 14.07.03

- (1) establish.
- area, regional. :
- (2) Repealed
- (3) Repealed
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STATE OF ALASKA

DEPARTMENT OF REVENUE

TREASURY DIVISION

BILL SHEFFIELD, GOVERNOR

ELEVENTH FLOOR,
STATE OFFICE BUILDING
POUCH SB
JUNEAU, ALASKA 99811
PHONE:

February 27, 1984

The Honorable Mae Tischer
Chairperson
House Health, Education,
& Social Services Committee
Pouch V
Juneau, AK 99811

Dear Representative Tischer:

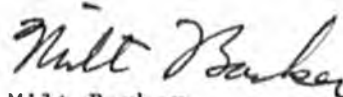
At the request of your staff, I offer the following comments on HB 492 and draft CS HB 492:

1. The substitution of a program which provides state grants for school construction in place of state reimbursement for debt service and delayed reimbursement for cash expenditures has several attractive features:
 - a) such a substitution seems generally propitious at a time of high municipal bonded indebtedness and large amounts of state cash available for expenditure;
 - b) by undoubtedly eliminating most municipal bonding for schools--which currently makes up roughly 50% of all municipal indebtedness--the legislation would free up municipal debt capacity and reduce interest costs for other types of municipal capital projects;
 - c) the state would avoid paying interest at rates higher than it would incur by borrowing itself to pay for school construction;
 - d) provision of grants rather than reimbursement should usually result in state commitment for project funding prior to construction commitments; this would allow for budgeting with greater certainty as to requirements for school construction funding and also the possibility for consideration in the budget process of relative merits and needs for particular projects; a grant program will also reduce municipalities' needs for and costs of interim funding prior to reimbursement.

February 27, 1984
The Honorable Mae Tischer
Page 2

2. The replacement of a 50% cost-sharing program with a 90% program raises anew the problem of state cost sharing at such a high level as to eliminate many municipal incentives to appropriately size and design facilities and control project costs. Of course, this problem is mitigated to a certain extent by the requirement for Department of Education approval of projects and the statutory definition of project costs.
3. The Department of Revenue would like to suggest that interest on the grant account not be dedicated to the account. Even if it would be arguably legal to do so, there seems to be no pressing need which would require the legislature and governor to give up their budgetary discretion with respect to this income.

Sincerely,



Milt Barker
Deputy Commissioner

MB:mw

STATE OF ALASKA
THE LEGISLATURE

POUCH STATE CAPITOL
JUNEAU ALASKA 99801
907-465-2600

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 22, 1984

SUBJECT: Dedication of interest earned on
special fund accounts
(CSHB 492 (HESS))

TO: Representative Mae Tischer
Chairman, Health, Education, and
Social Services Committee

FROM: Keith B. Levy *KBL*
Legislative Counsel

Enclosed is a Committee Substitute for HB 492, relating to state aid for school construction. At your request, I have included in section two of this draft a provision allowing interest earned on the school construction grant account to be deposited directly into the account without an appropriation from the legislature. You should be aware that this provision may be in violation of the prohibition against dedicated funds in the Constitution of the State of Alaska.

Article IX, section 7 of the state constitution provides:

The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article [the Alaska Permanent Fund] or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

Thus, the state constitution prohibits the dedication of certain state revenues to any special purpose except for three specific exceptions: the Alaska Permanent Fund, participation in federal programs, and funds grandfathered in at the time the constitution was adopted. It seems clear that the provision in your bill requiring the dedication of

interest income does not fall into any of the exceptions expressly provided for in the dedicated funds clause.

Two questions are presented by your bill with respect to the dedicated funds clause. First, is interest income a "state tax or license" within the meaning of article IX, section 7 of the state constitution such that the dedicated funds clause applies at all? Second, does placing that interest income into the school construction grant account so that it may be used without an appropriation by the legislature amount to a dedication to a special purpose?

The meaning of "state tax or license":

In a recent decision, the Supreme of Alaska had occasion to consider whether certain mandatory tax assessments to be paid directly to private aquaculture associations amounted to a "state tax or license" that would invoke the dedicated funds clause. State v. Alex, 646 P.2d 203 (Alaska 1982). Concluding that the assessment did come within the ambit of the dedicated funds provision, the court cited 1975 Alaska Op. Atty. Gen. No. 9 with approval:

...it is our conclusion that the dedication of any source of public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever is limited by the state Constitution to those existing when the Constitution was ratified or required for participation in federal programs. (Emphasis added.)

Alex, supra, at 210. This language indicates that the Supreme Court takes a very broad view of the kinds of revenue that amount to a state tax or license within the meaning of the dedicated funds provision. Accordingly, there is a strong possibility that the Court would consider interest income a state tax or license that may not be dedicated to a special purpose. Since the issue has not been placed squarely before the Court, however, it remains an open question.

The dedication of interest income to a special fund:

Last year, the Attorney General released an opinion providing a thorough discussion of the dedicated funds clause. 1982 Alaska Op. Atty. Gen. (November 30). That opinion specifically discusses the second question raised by your bill: the applicability of the dedicated funds clause to interest income that is returned to a special fund. The

opinion acknowledges that an argument could be made that placing interest generated by a fund back into the fund without an appropriation by the legislature does not violate the purpose of the dedicated funds clause: to allow the legislature to retain control of state revenues. However, the Attorney General reached the following conclusion:

A difficulty that arises from the view that the dedicated funds prohibition is not applicable to interest or investment income on separate funds is that it permits steadily increasing amounts of money to be received and used by state departments and agencies without legislative control through the annual budget process. This is precisely the problem posed by the dedication of revenue sources which the drafters [of the state constitution] sought to avoid. For this reason, while we are not certain about the likely outcome, we doubt that a blanket exception for derivative income would be approved by the courts.

1982 Alaska Op. Atty. Gen., at 16 (November 30). Thus, in light of the significant amounts of interest generated by various state funds and the broad view of the dedicated funds clause taken by the Supreme Court, the dedication of interest income to the school construction grant account is at least open to constitutional attack.

In conclusion, while the applicability of the dedicated funds clause to interest income remains undecided, there are strong indications that such a dedication of funds may be unconstitutional. As an alternative, the legislature might consider including a provision in the annual budget bill appropriating the interest income earned on the school construction grant account into the account. This would not guarantee that the interest would be appropriated to the account in future years, but it would provide that money to the account on an annual basis and thereby circumvent the constitutional problem.

KBL:ojb
J3/117

(e) "costs of school construction" means the cost of acquiring, constructing, enlarging, repairing, remodeling, equipping or furnishing of public elementary and secondary school buildings and includes the sum total of all costs of financing and carrying out the project: these include, but are not limited to, the costs of all necessary studies, surveys, plans and specifications, architectural, engineering or other special services, acquisition of real property, site preparation and development, purchase, construction, reconstruction and improvement of real property and the acquisition of machinery and equipment as may be necessary in connection with the project; an allocable portion of the administrative and operating expenses of the grantee; the cost of financing the project, premiums on insurance and legal fees.

(f) An allocation under (a) of this section for school construction begun after July 1, 1984, shall be reduced by the amount of money used for the construction of residential space, hockey rinks, planetariums, saunas, and other facilities for single purpose sporting or recreational uses that are not suitable for other activities. An allocation under (a) of this section may not be reduced by the amount of money used for construction of a small swimming pool, tank, or water storage facility used for water sports. However, an allocation shall be reduced by the difference between the amount of money used to construct a swimming pool that is competition size or larger and the amount of money that would have been used to construct a small swimming pool, tank or water storage facility, as determined by the commissioner.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 1800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 3, 1984

SUBJECT: Sectional analysis of HB 492
TO: Representative Walt Furnace
FROM: Keith B. Levy *KBL*
Legislative Counsel

At your request, I have prepared a sectional analysis of HB 492, "An Act relating to state aid for school construction; and providing for an effective date." The central function of the bill is to repeal the existing program of state aid for the retirement of school construction debt and replace it with a grant program.

Sections 1, 3, and 4 simply amend existing sections of law that refer to the existing aid program so that they now refer to the new program.

Section 2 establishes the new program of state grants for school construction (AS 14.11.200). Under the new program, the Department of Education is authorized to grant municipal school districts 90 percent of the cost of school construction projects approved by the department (AS 14.11.200(a)). The bill sets out a list of priorities to be used by the department in determining which projects are eligible for the grants (AS 14.11.200(c)). A school construction grant account is created consisting of funds to make the grants (AS 14.11.200(b)). To be eligible for a grant, a municipality must agree to pay at least 10 percent of the construction costs with cash or bonds issued through the municipal bond bank authority. The project must also be approved by the voters of the municipality (AS 14.11.200(d)). "Cost of a school construction project" is defined as all the costs of planning, financing, and carrying out the project, excluding costs for single purpose sporting facilities.

The way the program is set up, the department would not distribute available funds to all potentially eligible school

Representative Walt Furnace
Page 2
February 3, 1984

construction projects so that some projects would receive less than 90 percent funding. Rather, eligibility will be determined in part by the amount of funds available each year. Consequently, eligible projects will receive 90 percent funding and other projects will receive nothing.

Sections 5 and 6 repeal the existing school construction debt retirement program except that the program remains in effect with respect to a project if construction on the project began before July 1, 1984, or if the bonds for the project are authorized after June 30, 1983, and before July 1, 1984.

Section 7 provides that the Act takes effect July 1, 1984.

KBL:lmb
L3/043

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 492
 Title: relating to state aid for school construction
 Sponsor: Pestinger/Larson
 Requestor: House HESS
 Date of Request: Feb. 27, 1984

FISCAL DETAIL

Agency Affected: Education
 Program Category Affected: _____
 BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The fiscal impact of the bill is indeterminate as the school construction fund could be funded at any level desired by the Legislature.

ANALYSIS: Attach a separate page for analysis

Prepared By: William D. Thompson, Director Phone: 465-2865
 Division: Management, Law & Finance Date: 2/27/84
 Approved by Commissioner: Harold Reynolds, Jr. Date: 2/27/84
 Agency: Education

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83